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No. 85-1477

In The

Supreme Court of the United States

October Term, 1985

JANET LUCY, Personal Representative of the Estate of RAYMOND LUCY, Deceased; and JANET LUCY, DLORAH LUCY, and ANGELA LUCY, Individually,

Petitioners,

-vs-

AMOCO OIL COMPANY, a Maryland corporation,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIÆ* — *AND* — BRIEF OF CONCERNED LEADERS IN GOVERNMENT, EDUCATION AND BUSINESS AS *AMICUS CURIÆ*

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIÆ*

Undersigned concerned leaders in government, education and business hereby move for leave to file the attached Brief *Amicus Curiæ* pursuant to Rule 36, consent to the filing of this Brief having been withheld by Respondent.

The individuals undersigned are not only women who are concerned about, but are actively involved in government, education and business in the State of Michigan. Thus, we have an interest in the particular facts of the case of the *Estate of Raymond Lucy, et al.* v *Amoco Oil Company*, and the broader implications of whether death of a franchisee (who is usually a male) is a proper reason for automatic termination of a service station franchise (which usually affects a surviving widow and her family). The implications of the question at issue in the instant case fall far beyond the ramifications of

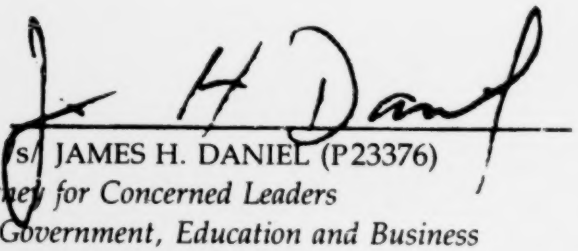
whether it is proper to terminate one particular dealership on the basis of the death of the franchisee. The broader implications of this question are that the Petroleum Marketing Practices Act was enacted as remedial legislation to protect independent service station dealers from the oppressive power of oil companies in their ability to terminate or non-renew service station franchises.

The issue of whether the death of a franchisee is a permissible reason for automatic termination of a service station franchise under the PMPA becomes important because death of the franchisee was not a reason specified in the Act as a permissible reason for termination or non-renewal, yet the oil companies have used the death of a franchisee as a reason for automatic termination and have been consistently upheld by the Courts. Thus, the protections for independent business persons sought to be provided by this Act have been removed.

The undersigned individuals want this Court to know that as women involved in business and government, we are appalled at the practice of the oil companies in terminating the business interests of women who survive their husbands (the service station franchisees) and feel that this practice has a definite discriminatory impact upon women business persons in general. The failure of the lower courts to properly interpret the PMPA, to implement the protections against capricious and discriminatory terminations, requires that this Honorable Court not only grant the Petition for Certiorari, but reverse the lower court decisions which have implemented this aspect of the PMPA.

WHEREFORE, it is respectfully prayed that this Motion for Leave to File the attached Brief *Amicus Curiæ* be granted.

Respectfully submitted,

By: 

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Dated: April 10, 1986

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-vs-

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Respondent.

AMICUS BRIEF OF CONCERNED LEADERS IN GOVERNMENT, EDUCATION AND BUSINESS

INTEREST OF CONCERNED LEADERS IN GOVERNMENT, EDUCATION AND BUSINESS

The interest of the concerned leaders in government, education and business is set forth in their Motion for Leave to File this Brief *Amicus Curiæ*.

SUMMARY OF ARGUMENT

This Honorable Court should grant the Petition for Writ of Certiorari in the instant case because the protections to individual business persons presumed to be guaranteed by the Petroleum Marketing Practices Act, 15 U.S.C. § 2801 *et seq.*, have not been given effect by the court decisions determining that death of the named

franchisee is a proper reason for automatic termination of a service station franchise.

ARGUMENT

The undersigned join with the petitioners in the case of the *Estate of Raymond V. Lucy* v *Amoco Oil Company* in requesting that this Honorable Court grant a Writ of Certiorari to the Sixth Circuit Court of Appeals to review the question of whether the death of a service station franchisee is a proper ground for the automatic termination of a service station franchise under the Petroleum Marketing Practices Act, 15 U.S.C. § 2801 *et seq.* This issue has important ramifications for women as business persons and as family providers since the lower court decisions on this issue have left widows who survive a male service station franchisee without any of the protections of their business interests, which were intended to be so guaranteed by the Petroleum Marketing Practices Act (PMPA). The oil company's franchising practices, coupled with decisional interpretations of whether the death of a franchisee is always a reason for termination of a franchise relationship under the PMPA, takes on equal protection and possibly civil rights implications.

As a general course of business, an oil company will agree to enter into a franchise relationship with only one individual; they will not enter into a franchise relationship agreement with a corporation, with a partnership, or with more than one individual as the franchisee. Additionally, a standard clause in oil company franchise agreements provides that upon the death of the franchisee, the franchise relationship terminates. The terms of these franchise agreements are contained in preprinted contracts, wholly drafted by the oil companies and completely non-negotiable. Regardless of the extent

of involvement of a spouse or other family members in the operation of the business or the ownership of the business assets, upon the death of the named franchisee, the franchise relationship and the entire business operation ceases.

The Petroleum Marketing Practices Act was enacted to protect service station franchisees from arbitrary and discriminatory termination or non-renewal, to protect franchisee independence which could be undermined by the use of threats or termination to compel compliance with the marketing policies of the franchisor, to allay concerns that termination would disrupt the expectations of the parties that the business relationship would be a continuous one, and to compensate for the gross disparity of bargaining power which results in franchise agreements that are essentially contracts of adhesion. S. Rep. No. 95-731, p. 15; *Brach* v *Amoco Oil Company*, 677 F2d 1213 (CA 7, 1982).

The PMPA also provides that a petroleum marketing franchisor may not terminate or non-renew a franchise relationship except upon the occurrence of "an event which is relevant to the franchise relationship and as a result of which termination of the franchise or non-renewal of the franchise relationship is reasonable." 15 U.S.C. § 2802(b)(2)(C). The Act goes on to list twelve events by way of example which can be considered to be events which are relevant to the franchise relationship and as a result of which termination or non-renewal is reasonable.

The death of the franchisee is not enumerated in this list contained in the statute; however, every reported decision which has interpreted this issue has concluded that termination upon the death of a franchisee is reasonable under the PMPA. *See, Kostantas* v *Exxon*, 663 F2d 605 (CA 5, 1981), *cert. den.*, 456 U.S. 1009; 102 S. Ct.

2302; 73 L Ed 2d 1305 (1982); *Blankenship* v *Knox Oil Company*, 548 F Supp 789 (E.D. Tenn., 1982); *Iannuzzi* v *Exxon*, 572 F Supp 716 (D.N.J., 1983); *Lanham* v *Amoco Oil Company*, 481 F Supp 405 (D. Md., 1979); *Attal* v *Shell Oil*, 41 C.C.H. Business Franchise Guide, ¶ 8025 (N.J. Supp. Ct., 1983); *Mamourian* v *Exxon*, 47 C.C.H. Business Franchise Guide, ¶ 8093 (D.N.J., 1983).

With respect to the impact upon women as business persons, property owners, and wage earners, the most far-reaching decision in this regard is the case of *Iannuzzi* v *Exxon*, 572 F Supp 716 (D.N.J., 1983). This case involves a situation in which a woman was a complete joint venturer in a quasi-partnership with her husband with the knowledge and approval of the franchisor. Mrs. Iannuzzi actively dealt with the franchisor in the conduct of the franchise business, was a co-owner of the service station premises, and in all respects was an equal business partner with her husband in the operation of this business entity. However, the most recent franchise agreement executed with Exxon was in the name of Mr. Iannuzzi alone. When he died, the franchise relationship died with him because her name was not on the franchise agreement as a franchisee.

In the instant case, *Lucy* v *Amoco*, the female members of the Lucy family were not only an integral part of the operation of the service station business, testimony during the course of trial made it clear that during the last several years of operation of that business, virtually the only business carried on by Raymond Lucy was dealings with Amoco Oil Company. Again, Raymond Lucy's name was the only one on the franchise agreement. When he died, the franchise died with him under the terms of the franchise agreement with Amoco Oil Company, despite the years of effort, energy, and expectations of the female members of this business. As

with Mrs. Iannuzzi, all of their business interests were completely terminated upon the death of one person, despite the fact that the operation of the business would not materially change after that person's death.

If decisional interpretations of the PMPA such as *Iannuzzi* are allowed to stand, women who are business partners with their husbands in the operation of gasoline service stations will continue to be denied the protection against arbitrary or capricious termination of their business relationships by large oil companies which the PMPA sought to guarantee upon its enactment. To the extent that it is almost always unexpected, death is a capricious event. To the extent that women business partners are not allowed to become co-franchisees and thus protect their financial and personal investments, these women are having their business and contractual relationships disrupted (*i.e.*, terminated) due to causes and factors they have no control over and which, in many instances do not materially affect the operation of their business. Therefore, these terminations are arbitrary.

Although the PMPA was enacted to protect against arbitrary terminations, the effect of the court decisions interpreting death as a reason for automatic termination of these franchises has been to eviscerate these protections as they apply to women. Approximately 95% of the petroleum service station dealers in the State of Michigan are male. Many of these stations involve family operations with the wife and children intimately involved in the course of business. Yet these individuals whose names are not allowed to appear on franchise agreements have no protection of their business interests and are always subject to having years of effort, hard work, and financial investment taken from them because one of the principals of the business is no longer part of the operation.

Thus, this issue is not simply one of whether a particular family or spouse has wrongfully had her business interest terminated under the PMPA. Rather, this issue has implications for women business persons all across the country, and it is necessary that this Court review this issue and give full meaning to the protections which Congress intended to provide when the PMPA was enacted.

CONCLUSION

This Honorable Court should not only grant the Petition for Writ of Certiorari to review the question of whether death is an acceptable reason for automatic termination of a petroleum franchise under the Petroleum Marketing Practices Act, this Court should rule upon full decision that death is not an acceptable reason for automatic termination of a petroleum franchise and reverse the decisions of the lower courts cited above.

Respectfully submitted,

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Dated: April 10, 1986